will be reduced by $92.50 and the tax payable by the agreed sum of $23.00 which must be refunded to him.

I authorise the publication of the facts of the case, the arguments and the decision without disclosing the name or office of the appellant.

The respondent must pay the appellant's costs of these proceedings both here and before the Board of Review.

Order accordingly.

Solicitors: *Rodyk & Davidson; State Advocate-General.*

SEE YOKE SOON v. REGINA

[A. Cr. J. (Buttrose J.) May 2, 1961]

[Singapore — Magistrate's Appeal No. 305 of 1960]

Merchant Shipping — Vessel number — Charge of "obscuring" the permanent number — Merchant Shipping Ordinance (Cap. 207), ss.419, 462 and 463 — Singapore Port Rules, 1936, r.66(2).

The appellant was convicted on the charge of having "obscured" the permanent number of his motor sampan by covering it with cargoes and "he has thereby committed an offence under r.66(2) of the Singapore Port Rules, 1936 and punishable under section 419(2) of the Merchant Shipping Ordinance (Cap. 207)." The vessel in question was carrying a cargo of 200 drums of oil and as a result of their stacking the number was temporarily hidden from view. There was no suggestion that there was any intentional or deliberate obscurement of the number by the appellant. It was contended for the appellant, *inter alia*, that the rule under which he was charged did not come within the ambit of the section under which the offence could be punished, and that the word "obscure" had been misconstrued.

Held: (1) the rule under which the appellant was charged was made in pursuance of the rule making power contained in section 462 of the Merchant Shipping Ordinance and not in section 419. The offence with which he was charged is punishable under section 463 and not section 419(2) as alleged. The charge therefore was bad in law;

(2) the word "obscured" in r.66(2) of the Singapore Port Rules is used in connection with the words "removed" and "altered" all of which connote a deliberate and intentional concealment of the boat's number. As there was no such intentional or deliberate obscurement of the number by the appellant, he had not committed any offence under r.66(2).

MAGISTRATE'S CRIMINAL APPEAL.

G. Murugaiyan for the appellant.

A. W. Ghows (Senior Crown Counsel) for the respondent.

Buttrose J. (delivering oral judgment): This is an appeal from a decision of the Magistrate's Court convicting the appellant of the offence of obscuring the permanent number of his motor sampan No. SC. 9887 by covering it with cargo under Rule 66(2) of the Singapore Port Rules 1936 and imposing a fine of $25.00 under section 419(2) of the Merchant Shipping Ordinance (Chapter 207).

The rule under which the appellant was charged was made in pursuance of the rule making power contained in section 462 of the Merchant Shipping Ordinance and not in section 419. The offence with which the appellant was charged is punishable under section 463 and not section 419(2) as alleged. The charge therefore is bad in law.

In the second place the word "obscured" in Rule 66(2) is used in association with the words "removed" and "altered" all of which connote a deliberate and intentional concealment of the boat's number.

It was not suggested in the present case that there was any intentional or deliberate obscurement of the number by the appellant. The motor sampan was carrying a cargo of 200 drums of oil and as the result of their stacking the number was temporarily hidden from view. Once the drums were off-loaded the number could be clearly seen.

In the particular circumstances of this case the appellant has not, in my judgment, committed any offence under Rule 62(2).

The appeal must be allowed and the conviction and sentence quashed. The fine of $25.00 if paid must be refunded to the appellant.

Appeal allowed.

Solicitors: *Marshall & Chung.*

TEO KIM HUI v. REGINA

[A. Cr. J. (Buttrose J.) May 2, 1961]

[Singapore — Magistrate's Appeal No. 265 of 1960]

Criminal Law and Procedure — Jurisdiction — Criminal District Court — Penal Code, s.397 — Criminal Procedure Code (Cap. 132), ss.8 and 10.

The appellant appeals against the decision of the Criminal District Court convicting him of an offence under section 397 of the Penal Code and of imposing a sentence of 3 years' imprisonment. It was argued for the appellant (on a preliminary point) that the trial was a nullity in view of sections 8 and 10 of the Criminal Procedure Code.

Held: as the essential prerequisites provided by sections 8 and 10(1) were not fulfilled in this case, the District Court had no jurisdiction to try the appellant on the charge of armed robbery.

MAGISTRATE'S APPEAL.

David Marshall for the appellant.

A. W. Ghows (Senior Crown Counsel) for the respondent.

Buttrose J. (delivering oral judgment): This is an appeal from a decision of the Criminal District Court convicting the appellant of the offence of armed robbery under section 397 of the Penal Code and imposing a sentence of 3 years imprisonment.

A preliminary point was taken by counsel for the appellant that the trial was a nullity in that the District Court had no jurisdiction to try the appellant on a charge under section 397 of the Penal Code because of the provisions of sections 8 and 10 of the Criminal Procedure Code.

In order to found the jurisdiction of the District Court to try an offence of armed robbery there must be, by virtue of the provisions of section 8 —

(i) an application by the Public Prosecutor to the District Court to try such offence;

(ii) the appellant must consent to be tried by such Court.

There was here no application by the Public Prosecutor before the Court to try the offence. All that appears to have happened was that after the main witness for the prosecution, the complainant, and his sister had given their evidence the prosecutor informed the Court that the appellant had not consented to be tried by the District Court. The Court thereupon inquired of the appellant who stated that he wished to be tried by that Court and his counsel intimated that he did not wish the two prosecution witnesses to be recalled and the trial proceeded.

This, in my view, falls far short of and is quite inadequate to meet the requirements of section 8. In any event the prosecuting officer, an Inspector of Police, was not the Public Prosecutor for this purpose. The matter is governed by section 391 of the Criminal Procedure Code.

As the essential prerequisites provided for by section 8 have not been fulfilled the District Court, in my opinion, had no jurisdiction to try the appellant on this charge of armed robbery.

The effect of section 10(1) of the Criminal Procedure Code, in so far as it concerns this appeal, is that the offence of armed robbery under section 397 of the Penal Code may only be tried by the High Court notwithstanding the other provisions of the Code.

For these reasons therefore the trial was, in my view, a nullity and the appeal must be allowed and the conviction and sentence quashed.

As the appellant has already served six months of his sentence and in view of the unusual circumstances surrounding this case, I do not propose to remit the proceedings back to a Magistrate's Court for a Preliminary Inquiry.

Order accordingly.

Solicitors: *Marshall & Chung.*

GOVERNMENT OF THE FEDERATION OF MALAYA v. FRANCIS KORAN

[O.C.J. (Neal J.) April 27, 1961]

[Ipoh — Originating Motion No. 19 of 1960]

Workmen's Compensation Ordinance, 1952, ss.30(2) and 43 — Workmen's Compensation Regulations, 1953, reg. 32 — Whether intra vires or ultra vires.

Legislation — Regulation in conflict with statute — Court's jurisdiction.

This was an appeal from an award of the arbitrator under the Workmen's Compensation Ordinance, 1952 that failure to deny the claim constituted an admission under reg. 32. The two main grounds of appeal were firstly whether or not reg. 32 of the Ordinance was *intra vires* or *ultra vires* the rule making power contained in the Ordinance and secondly, whether if it was *intra vires*, it creates no more than a rebuttable presumption. It was argued on behalf of the workman that the regulation having been tabled before Parliament (as it then existed) and there being no motion to annul, the Court could not go into the question of *vires*.

Held: (1) the effect that the Court will not interfere with statutes and certain statutory instruments is limited to the statutes themselves and to such subsidiary legislation or instruments as are by the enactment itself declared to form part of the legislation enacted. The legislature having by its language not claimed freedom from the controls of the Court, the Court has power to declare whether these regulations were *intra vires* or *ultra vires* the rule making power under section 32 of the Ordinance;

(2) regulation 32 is not only not within the general provisions of section 43 but it is in direct conflict with section 30(2); and that section 30(2) overrides reg. 32.

Cases referred to:—

(1) *Institute of Patent Agents* v. *Lockwood* [1894] A.C. 347.

(2) *Minister of Health* v. *The King (on the prosecution of Yaffe)* [1931] A.C. 494.

APPEAL FROM WORKMEN'S COMPENSATION ARBITRATION.

Syed Othman (Federal Counsel) for the applicant.

N. T. Rajah for the respondent.

Neal J. (delivering oral judgment): The Government of the Federation of Malaya appeals from an award of the arbitrator under the Workmen's Compensation Ordinance, 1952, when a ruling was given that the failure to deny the claim constituted an admission under regulation 32, and although it is not clear from the record judgment was entered against the Federation Government for the compensation claimed.

A number of grounds of appeal were put forward on behalf of the Government of the Federation: only two of those I find to be of any substance, namely, whether or not regulation 32 of the Workmen's Compensation Regulations, 1953 is *intra vires* or *ultra vires* the rule making power contained in the Workmen's Compensation Ordinance; and, secondly, whether even if the regulation be *intra vires* the powers of the rule making body that it creates no more than a rebuttable presumption, and the arbitrator was wrong in not so ruling and calling upon the Government to produce evidence in rebuttal, that is to say, the arbitrator was wrong in law in not giving an opportunity to the Government to produce evidence in rebuttal of the admission deemed to have been made. The first submission involves a decision on two points of law: firstly, and that has been so expressly raised on behalf of the workman, the regulation having been tabled before Parliament (as it then existed), and there being no motion to annul, whether there could be any enquiry in this Court as to whether or not regulation 32 in *intra vires* or *ultra vires*. The second question is, is regulation 32 *intra*